

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

JETBLUE AIRWAYS CORPORATION and
SPIRIT AIRLINES, INC.,

Defendants.

Civil Action No. 1:23-cv-10511-WGY

JOINT PROPOSED CONFIDENTIALITY PROTOCOL FOR PARTY DOCUMENTS

1. Pursuant to the Case Management Order, the Parties' Joint Proposed Confidentiality Protocol filed on August 21, 2023 (Dkt. 154), and the Court's statements at the March 21, 2023 scheduling conference concerning the importance of limiting the material that will not be included in the public record, the Parties hereby agree to the following proposed procedures and deadlines for protecting the confidentiality of the Parties' confidential information at trial.
2. The Parties propose that Defendants and Plaintiffs will notify each other by September 11, 2023 of (a) all documents on either Party's initial exhibit list or testimony included in either Party's deposition designations that, based on a good faith effort the Party does not believe will require sealing from the public record at trial or otherwise require any confidential treatment; and (b) any other documents identified as requiring sealing and/or confidential treatment in the NEA litigation.
3. The Party who has identified documents described above in Paragraph 2(b) will provide a list of the relevant exhibit numbers and copies of such exhibits with proposed redactions with the redactions unapplied, in "redbox" format, no later than September 12, 2023. The Parties shall confer on or before September 13, 2023, regarding any disagreements or disputes pertaining to initial confidentiality designations, including to discuss general subject matters that the Parties may reach agreement on as well as general subject matters that may require input from the Court.
4. The Parties will notify each other by September 15, 2023, of the exhibit number of any documents and the specific Bates range of the individual documents on either Party's initial exhibit list that were used as deposition exhibits (excluding Excel files) during a deposition in this case for any witness that has been identified on the Parties' final witness lists, for which documents either Party believes may require sealing and/or

confidential treatment. For the avoidance of doubt, this Paragraph does not require review of the entire family of a document that was used as deposition exhibit, but instead only the specific documents used for examination at the deposition regardless of whether the entire family appears on the exhibit list.

5. After review of the Parties' revised exhibit lists and no later than September 25, 2023, the Parties will (a) identify any additional exhibits that based on a good faith effort the Party does not believe will require sealing from the public record at trial or otherwise require any confidential treatment, and (b) identify the exhibit number of any newly listed documents (excluding Excel files) on the revised exhibit list that were used as deposition exhibits during a deposition in this case for any witness that has been identified on the Parties' final witness lists, for which documents either Party believes may require sealing and/or confidential treatment. For the avoidance of doubt, (b) does not require review of the entire family of a document that was used as deposition exhibit, but instead only the specific documents used for examination at the deposition regardless of whether the entire family appears on the exhibit list.
6. On or before October 3, 2023, each Party who has identified documents described in Paragraph 4 and Paragraph 5(b) shall provide copies of such exhibits (excluding any documents that exceed 20 pages) with proposed redactions with the redactions unapplied, in "redbox" format. The Parties shall confer on or before October 6, 2023 regarding any disagreements or disputes concerning the documents either Party believes may require sealing and/or confidential treatment (including the particular redactions proposed) as described in this Paragraph as well as Paragraphs 4 and 5(b) above.
7. On or before September 21, 2023, the Parties will each identify up to 30 documents on the Parties' exhibit lists that exceed 20 pages (or are Excel files) by Bates range that are highly likely to be used at trial and will likely require redactions. For those documents, the Party with whom the document originated shall provide copies of the documents with proposed redactions with the redactions unapplied, in "redbox" format, by October 5, 2023. The Parties shall confer on or before October 8, 2023, regarding any disagreements or disputes concerning the documents described in this Paragraph.
8. On or before October 9, 2023, the Parties may file a motion to seal identifying the general categories or subject matters of information they wish to have sealed from the public record at trial and protected as confidential, as well as a list of exhibits from the revised exhibit lists and deposition designations that do not require confidential treatment.
9. Consistent with that motion and any subsequent ruling from the Court, two days before a witness examination or any other use at trial (at no later than 5:00 pm), the Party seeking to admit or otherwise use a document designated as confidential and not subject to the reviews described herein or otherwise identified by the Parties as not requiring confidential treatment ("Additional Potential Confidential Trial Exhibits") shall identify such documents via email to opposing counsel. Before 5:00 pm on the next day (the day before the Additional Potential Confidential Trial Exhibits are to be used at trial), the Parties must meet and confer to determine which portions (if any) of the Additional

Potential Confidential Trial Exhibits will require redaction and/or some form of sealing from public view during trial.

10. To the extent agreement is not reached as to the confidentiality and/or treatment of any Additional Potential Confidential Trial Exhibit or documents described in Paragraphs 4, 5(b), and/or 7 herein, the matter will be raised with the Court before the relevant examination and consistent with the Court's preferred procedure. The trial time used for the Court to resolve any such disputes will be deducted from the time of the Party whose motion was not granted in full or whose objection was overruled in full or in part.
11. The Parties further stipulate that they will work in good faith to refrain from designating as confidential entire documents or pages of testimony unless warranted and otherwise seek to act in accordance with the Court's guidance for the need for an open and public trial.

Dated: September 8, 2023

Respectfully submitted,

/s/ Edward W. Duffy

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Joint Proposed Confidentiality Protocol for Party Documents was sent electronically via e-mail to all attorneys of record on September 8, 2023.

/s/ Elizabeth Wright
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